

MOLESTATION BY REGISTERED SEX OFFENDER  
J.A. v. LITTLE LEAGUE BASEBALL

Court of Appeals of California, Fourth Appellate District, Division Two  
May 3, 2007

[Note: Attached opinion of the court has been edited and citations omitted.]

Plaintiffs and appellants J.A. and S.W. appeal from judgment in favor of defendants Little League Baseball and East Baseline Little League following the trial court's granting of defendants' motions for summary judgment in plaintiffs' lawsuit against defendants seeking damages for sexual abuse they suffered from Norman Watson, a registered sex offender, through his association with East Baseline Little League. Plaintiffs contend that triable issues of fact exist as to whether East Baseline Little League was the proximate cause of plaintiffs' injuries and as to Little League Baseball's liability for East Baseline Little League's direct negligence based on an agency relationship. We will affirm the summary judgment as to Little League Baseball and reverse as to East Baseline Little League.

FACTS

Little League Baseball is a nonprofit organization founded in 1939 and granted a federal charter in 1964. Little League Baseball operates through local leagues, which obtain charters from Little League Baseball. Little League Baseball allows the local leagues to use the Little League Baseball name and official emblem.

Under the Little League Operating Manual and Official Rules and Regulations (Regulations), each local league is autonomous. Each local league establishes its own administration, elects its own board of directors, and establishes guidelines that best suit the needs of the local community. The local league is responsible for the selection and supervision of coaches, managers, umpires, and other local volunteers. At all times relevant to the current lawsuit, Little League Baseball did not require local leagues to perform background checks of volunteers, although Little League Baseball did recommend league screening committees for selection of team managers.

Local leagues must comply with Little League Baseball's Regulations, which address the manner in which teams are to be established, the official playing rules, and basic safety rules. The Regulations do not give Little League Baseball control over the day-to-day operations of the local leagues. Little League Baseball, with a staff of a hundred or so employees, has about 2.8 million participants worldwide.

East Baseline Little League is a nonprofit California corporation that has been issued a charter from Little League Baseball. In 1990, Watson, who was a registered high-risk sex offender, began volunteering as an umpire and later as a team manager and coach for East Baseline Little League. East Baseline Little League did not check into his background.

In 1990, S.W. was five or six years old, and her 12-year-old brother K.W. played baseball at East Baseline Little League. Watson frequently visited the W.'s home to play baseball with K.W. and K.W.'s friend. He often picked up K.W. from baseball practice and took him to the W.'s home when no other adult was there.

Watson occasionally stayed for dinner with the W.'s, and he attended outings with them. Between 1990 and 1992, Watson sometimes babysat for S.W. and K.W. at their home while their mother was traveling out of town for weekends.

In about 1990, Watson began molesting the W. children at their home. He molested K.W. at least twice, and he molested S.W. by touching her unclothed breasts, digitally penetrating her vagina, attempting anal penetration with his penis, and directing her to orally copulate him.

J.A. lived next door to the W.'s., and in 1990 and 1991, J.A. was a member of an East Baseline Little League team managed by Watson. In 1991, Watson twice invited J.A. to come over to the W.s' house to talk about baseball, and he molested J.A. at the W.'s home when no other adult was at the house. On the first occasion, Watson told the other children to go outside and play. Watson then massaged J.A.'s back, touched J.A.'s penis through his pants, and had J.A. touch Watson's exposed penis. On the second occasion, a few weeks later, Watson took J.A. into the W.'s house and tried to show J.A. how to masturbate. He and J.A. touched each other's penises.

S.W. played T-ball with East Baseline Little League for the 1992 season, when she was seven years old. Watson did not coach her T-ball team. Sometimes on the East Baseline ball field, Watson suggested to S.W. that they go back to her house and play. He sometimes leaned close to her when he spoke to her and touched her face.

S.W. later joined Civitan Little League (Civitan), a separate local little league organization. Watson umpired some of her games at Civitan. He also sometimes rubbed her back and hung onto her shoulder straps while she played catcher.

When S.W. was nine years old, Watson sometimes waited for her outside the restroom during Civitan practices. He walked her back to the field, and he placed his arm around her and sometimes brushed near her breast. S.W. was fully clothed when this happened. She told Watson to stop, and he did.

In 1990, Don Lawrence was on the board of directors of East Baseline Little League. On one occasion, Lawrence was locking up the facilities after a game when he heard Watson's voice in the field house say, "Hey, hey. We're up here." or "We're getting dressed." Lawrence later saw a man and a boy walking toward a car; they had to have come from the field house. Based in part on that incident, Lawrence suspected that Watson was a "pervert." Lawrence told other board members about the field house incident and told them he believed Watson was a pervert. The board seemed to take Watson's side. Board members told Lawrence he could be sued because of his statements about Watson.

Lawrence observed Watson spending too much time with some of the boys in the league and buying them gifts. Lawrence told his son to stay away from Watson. In addition, Lawrence told a

friend, also a board member, that they needed to keep an eye on Watson and advised the friend to tell his own children to stay away from Watson. Lawrence felt that Watson could pose a risk toward children in the league from broken homes. On one occasion, Watson offered to give one of the boys in the league a ride on his motorcycle to get ice cream after a practice, and Lawrence prevented the boy from going with him because Lawrence felt Watson might be a threat to the boy.

In the early 1990's, when Lawrence was the president of East Baseline Little League, he took steps to remove Watson from working with children in the local league because Lawrence felt Watson was a danger to certain children in the league, but when Lawrence himself left the following year, Watson was brought back. When Watson returned to East Baseline Little League, he told a board member he had been in jail for a gambling debt.

In 1997, Thomas Simanek, an East Baseline Little League board member and parent, discovered that Watson was listed as a high-risk sex offender on the Megan's Law CD-ROM at the sheriff's station. A board meeting was called, and thereafter, Watson resigned from East Baseline Little League. He was arrested in September 1998 on child molestation charges. He pleaded guilty to multiple counts of sexual abuse of a minor and is currently serving an 84-year prison sentence. None of the plaintiffs had reported their molestations before July 1997.

In February 2004, plaintiffs filed a complaint against Watson, East Baseline Little League, and Little League Baseball. Plaintiffs alleged claims against East Baseline Little League and Little League Baseball on theories of (1) negligent screening, selection, retention, and supervision; (2) negligent failure to take reasonable protective measures; (3) negligence — violation of special relationship; (4) negligence — breach of fiduciary duty; (5) negligent infliction of emotional distress; and (6) sexual harassment in violation of Civil Code section 51.9.

East Baseline Little League and Little League Baseball filed motions for summary judgment on the ground, among others, that their acts and omissions were not the proximate cause of the plaintiff's injuries. The trial court granted summary judgment for both defendants on the ground that, as a matter of law, the public policy element of proximate cause precluded liability for Watson's criminal conduct at locations and during activities unrelated to East Baseline Little League or Little League Baseball. Judgment was thereafter entered.

## NEGLIGENCE

Plaintiffs' claims against East Baseline Little League and Little League Baseball are all grounded in negligence — (1) negligent screening, selection, retention, and supervision; (2) negligent failure to take reasonable protective measures; (3) negligence — violation of special relationship; (4) negligence — breach of fiduciary duty; and (5) negligent infliction of emotional distress. Regardless of the theory asserted, the elements of actionable negligence include (1) a legal duty to use due care; (2) a breach of that duty; and (3) that the breach is the proximate cause of the resulting injury.

The trial court granted summary judgment on the ground that, based on public policy considerations, East Baseline Little League and Little League Baseball were not the proximate cause of plaintiffs' damages. We will consider the issue separately as to each defendant.

#### LITTLE LEAGUE BASEBALL

Proximate cause involves two elements: (1) cause in fact, and (2) the extent to which public policy considerations limit a defendant's liability for its acts.

The first element, cause in fact, is established if an act is a necessary antecedent of an event and this element is a factual question for the jury to resolve.

The second element is concerned, not with the fact of causation, but with the various considerations of policy that limit an actor's responsibility for the consequences of his conduct.

Because the purported causes of an event may be traced back to the dawn of humanity, the law imposes additional limits on liability that are not related to "simple causality."

The public policy considerations element of proximate causation is a policy-based legal filter on "but for" causation" that courts apply to those more or less undefined considerations which limit liability even where the fact of causation is clearly established. Because this prong focuses on the public policy considerations limiting liability, and not on the fact of causation, it is a question of law for the court.

Whether a defendant's conduct is an actual cause of a plaintiff's harm is a question of fact, but the existence and extent of a defendant's liability is a question of law and social policy. Thus, when the underlying facts are essentially undisputed, resolution of the public policy issue is appropriate in a motion for summary judgment.

"Proximate cause" — in itself an unfortunate term — is merely the limitation which the courts have placed upon the actor's responsibility for the consequences of the actor's conduct. Legal responsibility, therefore, is limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability. In other words, some boundary must be set to liability for the consequences of any act, upon the basis of some social idea of justice or policy. To set this boundary, the court must examine the nature and degree of the connection in fact between the defendant's acts and the events of which the plaintiff complains.

In the present case, with respect to Little League Baseball, plaintiffs seek to impose liability on the national organization that chartered the local organization for whom the molester volunteered and later worked as an employee when the molester, through the local organization, met and befriended the families of children he later molested at locations apart from Little League activities. We agree with the trial court that the nature and degree of the connection between the defendant's acts and the events of which the plaintiffs complain was, as a matter of public policy, too attenuated to support imposing liability on Little League Baseball.

The molestations of S.W. occurred through contacts sanctioned by her parent after the molester had formed a relationship with the parent. Moreover, the molestations occurred only during activities outside the scope of the molester's duties as a volunteer.

The plaintiffs argue that public policy supports imposing liability on Little League Baseball as the entity in the best position to implement effective screening measures. The plaintiffs' argument, however, goes to the *duty* element of a cause of action for negligence. However, the issue presently before us is the public policy considerations element of *proximate cause*, and under that element, legal liability is imposed only based on "those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability."

#### EAST BASELINE LITTLE LEAGUE

Plaintiffs contend that East Baseline Little League had reason to believe Watson was unfit and that East Baseline Little League had failed to use reasonable care in investigating him. East Baseline Little League is one step closer than Little League Baseball in the chain of causation of the molestations — East Baseline Little League entered into a direct relationship with Watson under which Watson first served as a volunteer and later as a paid umpire. Thus, the "syntax" is less convoluted with respect to East Baseline Little League's potential liability for negligence.

We conclude the trial court erred in granting summary judgment in favor of East Baseline Little League. As early as 1990, at least one East Baseline Little League board member formed suspicions against Watson based on Watson's behavior. That board member warned his own son to stay away from Watson and recommended to a friend that that friend take similar steps with regard to the friend's own son. Thus, we conclude triable issues of fact exist as to whether East Baseline Little League had reason to believe Watson was unfit and failed to use reasonable care to investigate him.

#### AGENCY RELATIONSHIP

Plaintiffs further argue that triable issues of fact exist as to whether Little League Baseball had sufficient control over East Baseline Little League to establish the existence of a principal-agent relationship. A principal may be liable to a third person for negligently hiring or selecting an unfit agent. However, the plaintiff must establish the existence of an agency relationship. In determining whether an agency relationship exists, courts look to the principal's "right to control the *means and manner* in which the result is achieved" by the agent. When the principal has no right to control the means and manner by which the agent acts, an agency relationship does not exist.

Plaintiffs argue that there was evidence that Little League Baseball had the right to control and supervise East Baseline Little League's activities. Among other things, plaintiffs argue that Little League Baseball requires local leagues to comply with Little League Baseball's Operating Manual and its detailed Regulations, under the threat of having their charters revoked.

Here, however, Little League Baseball neither selected nor supervised Watson and was not even aware of his association with East Baseline Little League until his arrest in 1997. It was

undisputed that Little League Baseball took no part in selecting or supervising Watson or approving his selection. Rather, Little League Baseball had no knowledge that East Baseline Little League had selected Watson as a volunteer or that Watson was a registered sex offender until after the molestations had occurred. We conclude that plaintiffs have failed to show the existence of triable issues of fact that would support a cause of action against Little League Baseball based on agency.

The judgment is affirmed with respect to Little League Baseball. The judgment is reversed with respect to East Baseline Little League.